

REMARKS

Upon careful and complete consideration of the Office Action dated February 5, 2008, applicants have amended the claims which, when considered in conjunction with the comments herein below, are deemed to place the present application into condition for allowance. Favorable reconsideration of this application, as amended, is respectfully solicited.

Before addressing the issues raised in the Office Action, applicants wish to point out that the originally filed set of 37 claims has been canceled and replaced with a new set of claims 38- 74. New claim 38 is a combination of original claims 1, 2, 6, 7 and 17. New claims 39 and 40 are based on new claim 38 and subject matter found in the specification. New claims 41-44 are based on original claims 3 and 4. New claims 45 and 46 are based on original claim 5. New claim 47 is based on original claim 4. New claims 48 to 56 are based on original claims 8 to 16. New claims 57 to 61 are based on original claims 18 to 22. New claims 62 and 63 are based on original claim 23. New claims 64 and 65 are based on original claims 24 and 25. New claims 66 and 67 are based on original claim 26. New claim 68 is based on original claims 27 and 28. New claims 69 to 73 are based on original claims 29 to 32. New claim 74 corresponds to original claim 37. It is respectfully submitted that no new subject matter has been added by way of these amendments.

The Office Action objected to claim 5 for a misspelling of a word. This has been corrected in the newly filed set of claims.

Claims 7 and 9 were rejected under 35 U.S.C. §112, second paragraph, for being indefinite. The Office Action was of the opinion that the term “non-segregating” means “not amorphous”, and therefore the combination of the claims 7 and 9 is vague. It is respectfully submitted that the subject matter of original claim 7 is now found in main claim 38. The subject matter of original claim 9 is now found in new claim 49. As was previously claimed, and as is now claimed, the composition of the present invention comprises at least two polyols, wherein the two or more polyols are non-segregating within the composition. Said composition may also contain a minor portion of non-microcrystal material, i.e. amorphous material, of one or more of said polyols. This is an additional component. That is, the “one or more of said polyols” making up the minor portion of the amorphous material

is separate and apart from the “two or more polyols” claimed as non-segregating in the main claim. It is respectfully submitted that these claims are definite and do distinctly claim the subject matter of the present invention and the rejection thereof is respectfully requested to be withdrawn.

Claims 11 and 12 were also rejected under 35 U.S.C. §112, second paragraph, for being indefinite. The Office Action was of the opinion that original Claims 11 and 12 were in contradiction, because while claim 11 claimed that “an inner core portion ... different from the microcrystallized outer portion”, claim 12 claimed that “said inner core preferably comprises milled maltitol, xylitol and/or lactitol in the same ratio as the ratio of maltitol, xylitol and/or lactitol in the microcrystalline outer core”. The Office Action interpreted this as meaning the inner core and the outer core could be the same. Applicants respectfully disagree with the Examiner. The inner core is said to “milled” maltitol, xylitol and/or lactitol whereas the outer core is said to be microcrystallized. Thus, applicants respectfully submit that the inner core is different than the outer core. Consequently, the rejection of these claims (now claims 51-53) is respectfully requested to be withdrawn as well.

Original claims 3-5, 12, 23-26 and 30-31 were rejected under 35 U.S.C. §112, second paragraph, for being indefinite because the claims contained the word “preferably” together with a narrower range or limitation of the originally specified range found in the claims. It is respectfully submitted that the use of the word “preferably” (along with the noted narrower ranges or limitations) has been deleted from the revised set of claims. Some of the originally noted preferable embodiments have been claimed in separate dependent claims and some have been deleted altogether. Based on said amendments, this rejection of the claims is now moot and should be withdrawn.

Finally, original claims 32- 36 were rejected under 35 U.S.C. §101 for being drafted as “use” claims, such claims not being allowable under U.S. practice. These claims have been deleted.

Turning to the substantive rejections of the Office Action, original claims 1-10, 17-21 and 23-27 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent No. 6,764,706 to Heikkila et al. (hereinafter referred to as “Heikkila et al.”) and U.S. Patent No. 5,017,400 to Olinger et al. (hereinafter referred to as “Olinger et al.”) and further

in view of published patent application WO 91/07100 to Oravainen et al. (hereinafter referred to as "Oravainen et al.")).

Heikkila et al. teaches a process for crystallization of xylitol. Olinger et al. teaches a sweetener composition that contains a combination of maltitol and xylitol. Oravainen et al. teaches the use of three polyols in a sweetener composition. The Office Action is of the opinion that the combination of these teachings would make the present invention obvious. Applicants respectfully disagree with the conclusions drawn by the Office Action.

It is respectfully submitted that the Office Action has not at all recognized the problem relating to the crystallization of the noted polyols together and especially the problems relating to the crystallization of maltitol. On the contrary, the Office Action stated that it is expected that a homogenous and non segregating composition will result, when spraying a mixture of polyols. This was not the case at the time the present invention was made. At the time of the making of the present invention, it was very difficult to crystallize the polyols if they were not "pure", i.e. at high concentrations (above 92%) of the polyol before spray drying.

The Office Action has recognized that Heikkila et al. does not teach the microcrystallization of a polyol composition comprising at least two polyols. Further, Heikkila et al. teaches that the purity of the xylitol should be more than 80%, preferably more than 90% and most preferably up to 98% or more (see column 6, lines 50-54 of Heikkila et al.). Thus, Heikkila et al. teaches away from the present invention. That is, Heikkila et al. teaches that their composition should contain a maximum of 20 % of other ingredients. The present invention, to the contrary, teaches at least 25 % of the other polyol. Heikkila et al. does not suggest or give any teaching towards a composition containing other polyols crystallized together with xylitol.

Olinger et al. teaches a combination of milled crystalline xylitol and crystalline maltitol. In the taught composition of Olinger et al., these crystals are separately crystallized, then milled and finally the milled crystals are mixed together. The end result is not a composition like that of the present invention, which contains polyols that have been microcrystallized together into a solid microcrystalline product. An advantage of the present

invention is that purification of the polyol mixtures is not necessarily needed and crude polyol mixtures may be used as the starting material. This is advantageous compared to the three step process of the prior art: separate crystallization, milling and mixing.

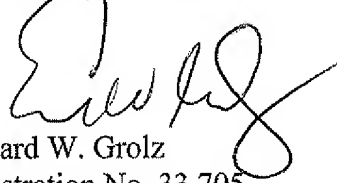
The Office Action has further cited Oravainen et al. in order to show that mixtures containing three polyols are known from the prior art. The teachings of Oravainen et al. do not overcome the deficiencies noted above with respect to Heikkila et al. and Olinger et al. Consequently, based on the remarks made above, incorporated herein by reference thereto, it is respectfully requested that the rejection of the claimed invention based on Heikkila et al., Olinger et al. and Oravainen et al. be withdrawn.

Original claims 13-16 were next rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Heikkila et al. and Olinger et al. as applied previously, and further in view of U.S. Patent No. 5,580,601 to Ribadeau-Dumas et al. (hereinafter referred to as "Ribadeau-Dumas et al."). Claims 11, 12 and 22 were also rejected under 35 U.S.C. 103(a), as allegedly being unpatentable over Heikkila et al. and Olinger et al. as applied previously, and further in view of U.S. Patent No. 6,821,535 to Nurmi et al. (hereinafter referred to as "Nurmi et al.").

As was the case with Oravainen et al., it is respectfully submitted that the teachings of either or both Ribadeau-Dumas et al. and Nurmi et al. do not overcome the deficiencies noted above with respect to Heikkila et al. and Olinger et al. Consequently, based on the remarks made above, incorporated herein by reference thereto, it is respectfully requested that the rejection of the claimed invention based on Heikkila et al., Olinger et al. and either Ribadeau-Dumas et al. or Nurmi et al. be withdrawn as well.

Based on the amendments and the remarks submitted above, it is respectfully submitted that all of the claims in the application contain patentable subject matter and a Notice of Allowance is respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward W. Grolz', with a large, stylized flourish at the end.

Edward W. Grolz
Registration No. 33,705

Scully, Scott, Murphy & Presser
400 Garden City Plaza-Suite 300
Garden City, New York 11530
(516) 742-4343
EWG:eh